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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0867-201157(a); FRL-9507-3]

Approval and Promulgation of Implementation Plans: Kentucky; Visibility Impairment Prevention for Federal Class I Areas; Removal of Federally Promulgated Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to rescind the federally promulgated provisions regarding visibility in the Kentucky State Implementation Plan (SIP). EPA approved Kentucky's visibility rules addressing new source review (NSR) for sources in nonattainment areas on July 11, 2006. EPA's approval of these rules neglected to remove the previous federally promulgated provisions from the Federal Implementation Plan (FIP). EPA is correcting this omission in this rulemaking. This action is being taken pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on [Insert date 60 days from date of publication in the Federal Register] without further notice, unless EPA receives relevant adverse comment by [Insert date 30 days from date of publication in the Federal Register]. If EPA receives such comment, EPA will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0867, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: benjamin.lynorae@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2011-0867," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2011-0867."

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail,

information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn S. Dominy, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Dominy may be reached by phone at (404) 562-9644 or by electronic mail address dominy.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background for This Action

On February 20, 1986, the Commonwealth of Kentucky submitted provisions constituting its plan to address visibility impairment in Federal Class I areas as a revision to Kentucky's SIP. EPA approved Kentucky's February 20, 1986, SIP revision on September 1, 1989, except for the provisions related to the review of new sources in nonattainment areas. In that action, EPA revised 40 CFR 52.936 to expressly reject

Kentucky's proposed nonattainment NSR provisions and substitute 40 CFR 52.28 by reference.

On September 2, 2004, and August 23, 2005, the Commonwealth of Kentucky submitted SIP revisions to address visibility in its nonattainment NSR program. EPA fully approved these SIP revisions on July 11, 2006. *See* 71 FR 38990.

The aforementioned SIP revisions provide the necessary changes to Kentucky's plan for visibility impairment prevention for Class I areas from sources in nonattainment areas and satisfy EPA's requirements as set forth in 40 CFR 51.307(b) and (c). These visibility provisions also satisfy the settlement agreement with the Environmental Defense Fund, et al., *Environmental Defense Fund v. Gorsuch*, No. C-82-6850 RPA (N.D. Cal.) (Settlement Agreement), described at 49 FR 20647 on May 16, 1984.

The first part of the Settlement Agreement required Kentucky to develop visibility NSR and visibility monitoring provisions to meet the requirements of 40 CFR 51.305 and 51.307 and submit those provisions to EPA by May 6, 1985. This part of the Settlement Agreement further required EPA to approve the state submittal or to promulgate a FIP by January 6, 1986. Since Kentucky had not yet submitted a final visibility SIP, EPA promulgated a federal program for Kentucky to meet the requirements of 40 CFR 51.305 and 51.307 on February 13, 1986 (51 FR 5504). The federal program, which is covered by the federal visibility monitoring strategy (40 CFR 52.26) and visibility NSR program (40 CFR 52.27 and 52.28), was promulgated as part of the Kentucky SIP. The provisions submitted by Kentucky on February 20, 1986, and approved by EPA on September 1, 1989, partially removed the federal promulgation. *See* 54 FR 36307.

The second part of the Settlement Agreement required EPA to propose and promulgate visibility FIPs addressing the general visibility plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (40 CFR 51.302 through 51.307), and long-term strategies (40 CFR 51.306) for those states whose SIPs EPA had determined to be inadequate with respect to the above provisions (*see* January 23, 1986, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIPs for deficient state's implementation plans (52 FR 7803)). However, as provided in the Settlement Agreement, a state could avoid the promulgation of said provisions by EPA in a FIP if it submitted a visibility SIP by August 31, 1987. The Commonwealth of Kentucky submitted a plan to satisfy the second part of the Settlement Agreement on August 31, 1987, and EPA approved the visibility SIP submittal for these elements on July 12, 1988. *See* 53 FR 26253.

As mentioned above, the Commonwealth of Kentucky provided a SIP revision on February 20, 1986, constituting its plan to address visibility impairment in Federal Class I areas as a revision to Kentucky's SIP. On September 1, 1989, EPA approved Kentucky's SIP revision (submitted on February 20, 1986) except for those provisions related to the review of new sources in nonattainment areas. As a result of EPA's aforementioned 1988 and 1989 actions, these nonattainment NSR provisions were the only remaining non-approved provisions in Kentucky's plan to address visibility impairment. On September 2, 2004, and August 23, 2005, the Commonwealth of Kentucky submitted rules for addressing visibility in its NSR program in nonattainment areas. EPA fully approved Kentucky's September 2, 2004, and August 23, 2005, SIP revisions on July 11,

2006 (71 FR 38990), but inadvertently did not remove the federally-promulgated provisions in 40 CFR 52.936. Today's action corrects that oversight.

II. Final Action

EPA is taking direct final action to correct an omission related to the visibility requirements for Kentucky. Specifically, EPA is removing the previous federally promulgated provisions in 40 CFR 52.936 for visibility from sources in nonattainment areas for Kentucky because the Commonwealth later submitted, and EPA approved, revisions covering visibility requirements for Kentucky. EPA is approving the aforementioned changes to the Kentucky SIP because they are consistent with the CAA and Agency requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is

advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal

Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds, Sulfur dioxide.

Dated: December 8, 2011

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart S – Kentucky

§52.936 [Removed and Reserved]

2. Section 52.936 is removed and reserved.

[FR Doc. 2011-32171 Filed 12/15/2011 at 8:45 am; Publication Date: 12/16/2011]